not proved that she had a reasonable apprehension for her safety or of danger of bodily hurt. He seems to have ignored the uncontradicted evidence of *physical* violence suffered by the appellant on five occasions and indeed on the last occasion the physical violence resulted in the appellant having to be hospitalized for four days. Here not only was there physical violence but there was also uncontradicted evidence of a long continued series of acts persisted in by the husband causing not just a reasonable apprehension of danger to the appellant's limb and health but *actually* causing such danger. The husband was dependent on the appellant for money (as the learned trial judge found) and the fact (if such be it) that he did not deliberately aim to be cruel to his wife does not make his conduct any the less cruel within the meaning of the law. Like the husband in *Gollins*,[1] the husband here is a layabout, cohabitation between the parties is virtually impossible and the husband falued the marriage so little that he did not even trouble to enter appearance, let alone contest the petition. The permanence of marriage where that is possible is the best guarantee of a secure and happy family life, but the court would add nothing to the preservation of marriage as an institution if it were to continue to bond the husband and wife in the instant case in unholy deadlock.

In the circumstances I would substitute for the learned trial judge's order a decree of dissolution of marriage, this decree *nisi* not to be made absolute until after the expiration of three months from today.

Azmi L.P. and Ali F.J. concurred.

Order accordingly.

Solicitors: *Lim Kean Siew & Co.*

KESATUAN PEKERJA2 KENDERAAN SRI JAYA v. THE INDUSTRIAL COURT & ORS.

[F.C. (Azmi L.P., Suffian & Ali F.JJ.) September 19, 1969]

[Kuala Lumpur — Federal Court Civil Appeal No. X.38 of 1969]

Industrial Law — Trade union — Recognition of — Trade union recognised by employer — Rival trade union applying for recognition — Dispute referred by Minister to Industrial Court — Jurisdiction of Industrial Court — Industrial Relations Act, 1967, ss. 8(4) & 10.

Administrative Law — Prohibition.

In this case the appellant trade union had been accorded recognition by the company employer in February 1968. Under section 10 of the Industrial Relations Act where a trade union has been accorded recognition no other trade union could make any claim for recognition in respect of the same workmen or class of workmen unless a period of two years had elapsed after such recognition has been accorded. The third respondent union contested the appellant union's right to represent the workers of the company. The dispute was referred to the Minister of Labour and acting under section 8(4) of the Industrial Relations Act the Minister referred the matter to the Industrial Court for a decision. The appellant union thereupon filed a notice of motion for an order of prohibition to stay the proceedings of the Industrial Court. Abdul Aziz J. ([1969] 2 M.L.J. 27) held that the Industrial Court had jurisdiction and dismissed the motion. On appeal,

Held, dismissing the appeal: (1) section 10 of the Industrial Relations Act does not prevent an aggrieved trade union from making a claim for recognition to an employer within the period limited by the section; the trade union may make such a claim but the employer would be entitled to refuse to consider it;

(2) on being notified of such refusal the trade union may report to the Minister but once the Minister having failed to resolve the matter, refers it to the Industrial Court, the court is invested with jurisdiction and is obliged to decide it one way or the other.

Authorities cited:—

(1) *Estate & Trust Agencies (1927) Ltd.* v. *Singapore Improvement Trust* [1937] M.L.J. 161; [1937] A.C. 898.

(2) *National Association of Local Government Officers v. Boulton Corporation* [1942] 2 All E.R. 425, 435 (second paragraph).

(3) de Smith on *Judicial Review of Administrative Actions*, 2nd Edn. p. 409.

(4) *Cargo Handling Corporation Ltd.* v. *Cargo Handling Corporation Staff Union* [1966] 2 M.L.J 278; [1967] 2 M.L.J. 98.

(5) *Halsbury's Laws of England*, 3rd Edn. volume 11, pp. 114 & 118.

(6) *Atkins' Encyclopaedia of Court Forms*, volume 10 p. 253.

(7) *Halsbury's Laws of England*, 3rd Edn. volume 36 pp. 387-388, 389-390, 391, 394-395.

(8) *Strouds' Judicial Dictionary*, volume 3, p. 2007.

(9) *Maxwell's Interpretation of Statutes*, 11th edn. pp. 326, 331 and 332.

(10) *Skinner & Company* v. *Shew & Company* [1893] 1 Ch. 413.

(11) *Rands* v. *Oldroyd* [1959] 1 Q.B. 204, 212.

(12) *R.* v. *Industrial Disputes Tribunal* [1954] 2 Q.B. 46.

(13) *R.* v. *Industrial Disputes Tribunal* [1954] 2 All E.R. 730.

(14) *R.* v. *Campbell* [1953] 1 Q.B. 585.

(15) *R.* v. *Comptroller-General of Patents and Designs* [1953] 3 All E.R. 40.

(16) *Roland Burrows' Words and Phrases* volume 4, 75-78.

(17) *Wittaker* v. *Kershaw* (1890), 45 Ch. D. 327.

FEDERAL COURT

S. Woodhull for the appellant.

Mrs. Ng Mann Sau (Federal Counsel) for the 1st respondent.

Ng Mann Cheong for the 2nd respondent.

R. Rajasingam for the 3rd respondent.

Cur. Adv. Vult.

Azmi L.P.: I have read the judgment delivered by my brother Suffian. I agree with it and have nothing to add.

Suffian F.J.: This is a dispute between two trade unions, namely, the Kesatuan Pekerja2 Kenderaan Sri Jaya, the appellant, and the Kesatuan Pekerja Pengangkutan Persekutuan Tanah Melayu, the third respondent. Each union claims to represent the majority of the workers employed by the Sri Jaya Transport Company (PTM) Ltd., the second respondent.

The question for decision in this appeal is whether the Industrial Court, the first respondent, has jurisdiction to decide a matter referred to it by the Minister of Labour where the matter involves a claim for recognition made by a trade union within two years of recognition having been accorded to a rival trade union. The answer to the question depends on the construction of the Industrial Relations Act No. 35 of 1967, in particular its Part III reproduced elsewhere here.

Until 1964 the Sri Jaya Transport Company recognized the third respondent union. On 17th September, 1964, the appellant union sought recognition for itself. Early in February, 1968, the company informed the appellant union that the company had decided to recognize the appellant as a trade union representing all the workers of the company, as it was satisfied that a larger number of its workers were members of the appellant union than of the third respondent union.

The third respondent union contested the appellant's right to represent the workers of the company. This dispute was reported to the Minister of Labour and, acting under subsection (4) of section 8 of the Industrial Relations Act, the Minister referred the matter to the Industrial Court for a decision.

In the Industrial Court the dispute became Case No. 5 of 1968.

We do not have before us the exact terms of reference made by the Minister to the Industrial Court.

On 24th April, 1968, the Industrial Court, acting under section 9 (2), ordered the appellant to be joined as a party.

On 9th May the court made an interim award as follows:—

(1) that the Ministry of Labour be invited to conduct a secret ballot on or before 31st May, 1968, in the presence of an officer of the court, of all workers (other than certain excepted workers) in the service of the company as on 1st February, 1968, the question to be asked being:—

"Which of the under-mentioned unions do you desire should make representations on your behalf in relation to wages and other general terms and conditions of service:—

[the third respondent union] or

[the appellant union]?"

(2) .....;

(3) that, upon the result of the secret ballot becoming known, the parties be at liberty to make representations or objections in relation to the conduct of the ballot within seven days thereafter;

(4) that, upon no representations or objections being made or in the event of such representations or objections being rejected:—

(a) if the greater number of votes in the ballot is in favour of the third respondent union, the company do accord to that union general recognition with retrospective effect from 1st February, 1968, and withdraw general recognition from the appellant union, but accord to the appellant union limited recognition as from that date; and

(b) if the greater number of votes in the ballot is in favour of the appellant union, then the general recognition accorded to that union by the company as from 1st February, 1968; and the withdrawal of general recognition from the third respondent union be affirmed, but the company do accord to the third respondent union limited recognition as from that date;

(5) .....;

(6) .....;

(7) that, pending the secret ballot and the consequential awards:—

(a) the company do continue to accord general recognition to the appellant union; and

(b) the company do accord to the third respondent union limited recognition.

The secret ballot was held on 29th May when the voting was as follows:—

For the third respondent union	488 votes
For the appellant union	426 votes
Spoilt votes	6 votes
Total =	920 votes

After the secret ballot, on 1st June the appellant union wrote to the Secretary of the Industrial Court, objecting to the conduct of the ballot.

On 19th June the appellant's present solicitors wrote to the court seeking to represent the appellant and stating, *inter alia*, that the appellant's intention to file objections to the conduct of the ballot would be exercised without prejudice to the remedy open to them under section 10 of the Act.

This was the first time that any mention was made of this section, which reads:—

"Where a trade union has been accorded recognition in respect of any workmen or class of workmen, whether by a decision of the court or otherwise, no other trade union shall make any claim for recognition in respect of the same workmen or class of workmen unless a

period of two years has elapsed after such recognition has been accorded....."

Subsequently on 4th September the appellant withdrew its objections to the conduct of the ballot, but previously on 19th August it had filed a notice of motion in the High Court for an order of prohibition to stay proceedings in the Industrial Court. In consequence of this motion, the Industrial Court deferred further proceedings.

Many arguments were presented before the High Court in support of the motion, but for the purpose of this appeal, only one argument remains for consideration. It was argued before the High Court as follows and that argument is repeated before us: the appellant union was accorded recognition by the company early in February, 1968. Section 10 provides that no other trade union could make any claim for recognition in respect of the same class of workmen within a period of two years, but notwithstanding this prohibition the third respondent union made such a claim. That is contrary to section 10. Therefore the Minister has no power to refer the claim to the Industrial Court for a decision and the Industrial Court to whom the claim was referred has no jurisdiction to consider it.

It is convenient at this stage to reproduce the relevant provisions (Part III) of the Act. They read as follows:—

"8. Claim for recognition.

(1) A trade union of workmen may serve on an employer or on a trade union of employers in writing a claim for recognition in respect of the workmen or any class of workmen employed by such employer or by the members of such trade union of employers.

(2) An employer or a trade union of employers upon whom a claim for recognition has been served shall, within thirty days after the service of such claim, either accord recognition or, if recognition is not accorded, notify the trade union of workmen concerned in writing the grounds therefor.

(3) Upon receipt of a notification under sub-section (2) or where an employer or a trade union of employers has failed to comply with the provisions of sub-section (2), the trade union of workmen may report the matter in writing to the Minister.

(4) The Minister, upon receipt of a report under sub-section (3), may take such steps as may be necessary or expedient to resolve the matter and shall, if the matter is not resolved, refer such matter to the court for decision.

9. Powers of the court.

(1) The court may, in deciding whether or not a trade union of workmen shall be accorded recognition, prescribe its extent and scope or the conditions upon which such recognition shall be accorded:—

Provided that the court in exercising the powers as aforesaid shall exclude from recognition:—

(a) workmen employed in a confidential capacity in matters relating to staff relations; and

(b) workmen who hold managerial positions and are in a trade union the membership of which is open to workmen who hold managerial and non-managerial positions.

(2) The court shall have power to join as parties to any proceedings all trade unions which claim recognition in respect of the same workmen or class of workmen employed by an employer.

10. Trade unions accorded recognition.
(Already reproduced above).

11. Trade unions not accorded recognition.

Where the court has decided that a trade union of workmen shall not be accorded recognition, such trade union shall not make any further claim for recognition until three months have elapsed after the decision."

Abdul Aziz J. held that the Industrial Court had jurisdiction and dismissed the motion.

He said:—

"I shall deal briefly with the question of jurisdiction. Recognition of a trade union is governed by Part III of the Industrial Relations Act. Under section 8, claim for recognition shall be made to the employer. If the employer grants recognition, there the matter ends. If he does not or for *any* reason refuses to grant recognition, the trade union may report the matter to the Minister and the Minister may either take steps to resolve it, or, he may refer it to the Industrial Court for a decision. If he makes a reference, a jurisdiction is conferred on the Industrial Court to deal with the subject of recognition. Manifestly, the Industrial Court cannot of its own volition entertain any direct claim for recognition. Under section 9 the court may when deciding the question join other competing trade unions as parties to the proceedings.

There is no dispute that the claim for recognition in Case No. 5 of 1968 was referred by the Minister to and, consequently, jurisdiction was conferred on the Industrial Court to adjudicate. Having regard to the whole tenor of the Act, section 10 could only mean that, where recognition has been accorded to any class of workmen either by the court or otherwise (namely, by the employer), no other trade union shall make a claim *to the employer* under section 8 for recognition in respect of the same workmen or class of workmen within a period of two years. A refusal by the company to grant the claim on ground of this limitation may, perhaps, be a ground for a request to the Minister for reference. The Minister's discretion seems to be unfettered by section 10. Once a reference is properly made, the Industrial Court obtains jurisdiction and the jurisdiction is not, in my view, vitiated or diminished by the initial lack of *locus standi* of the claimant when he makes the claim."

The appellant criticizes the judgment in the following way. Section 8 sets out the precise procedure to be followed by a trade union seeking recognition. Where an employer grants recognition in accordance with a claim made under the section, no dispute arises. This was the position with regard to the appellant's claim for recognition which was granted in February, 1968. Where, however, the employer fails to accord recognition, the matter may be reported to the Minister, and if the Minister is unable to resolve the matter, he *shall* refer it to the Industrial Court for a decision.

If the *court*, when seized of the matter, refuses to grant recognition, then by virtue of *section* 11 the trade union concerned may apply again for such recognition if, *three months* have elapsed from the date of the refusal.

But where the *court* or the *employer* has granted recognition to a trade union, then no claim for recognition by any other union shall be made until *two years* have elapsed from the date of such recognition. This is expressly provided for in section 10.

It is therefore submitted that by section 10 the third respondent union's claim for recognition was expressly precluded and that, in view of the period of limitation contained in the section, the Industrial Court could derive no jurisdiction to consider the claim.

My conclusion is as follows. We do not know exactly what happened immediately prior to the Minister's referring this matter to the Industrial Court. After recognition of the appellant by the company, did the third respondent make a claim for recognition to the company, and if so, did the company refuse to accord it recognition in view of the prohibition of section 10? The company would have been entitled to so refuse. And if it did so, it was obliged by sub-section (3) of section 8 to notify the third respondent in writing the grounds for the refusal. Probably it did so. If it did so, the third respondent would have a right to report to the Minister. Probably it reported to the Minister. On receipt of the report the Minister may by sub-section (4) resolve the matter. Knowing the bitterness that often exists between rival unions, it would not be surprising if the Minister failed to resolve the matter. Now in these circumstances what was the Minister to do? Sub-section (4) clearly spells out his duty: he *shall* refer the matter to the Industrial Court, and that was exactly what he did. Before us the regularity of the Minister's act is not impugned and under section 114 of the Evidence Ordinance this court may presume and does presume that the Minister's official act has been regularly performed. When the matter has been referred to the Industrial Court by the Minister in the proper exercise of his power, what is the Industrial Court to do? Can it decline to act? I do not think so. The scheme of the Act read as a whole is that once a dispute of this nature has been referred by the Minister to the Industrial Court, the court is at once invested with jurisdiction and is obliged to decide one way or another. That this is so is clear from section 27 and section 9.

If I am right, is section 10 then a dead letter? Can it be disregarded by an aggrieved union when recognition has been accorded by an employer to its rival? I think that it can be disregarded in the sense that it may within two years of that recognition claim recognition for itself from the employer, but only in that limited sense because the employer would be perfectly justified in refusing it recognition under section 10. Thereafter, of course, the aggrieved union may report to the Minister and the Minister must, if he cannot resolve the matter, refer it to the Industrial Court. I do not think that this is contrary to the spirit of the Act, for the principal object of the Act is to bring about industrial peace in the country. What better way of bringing about industrial peace than by reference to an impartial and authoritative tribunal?

I differ with respect from the learned trial judge as follows. He thought that section 10 prohibits an aggrieved trade union from making a claim for recognition to an employer within the period limited by the section. I think that such a union may make such a claim, but (and in this respect the learned trial judge and I are at one) the employer would be entitled to refuse to consider it. I go further than the learned trial judge by saying that the employer *should* refuse to consider it and then notify the aggrieved union the reasons for the refusal. It may then report to the Minister, but once the Minister, having failed to resolve the matter, refers it to the Industrial Court, the court is fully endowed with jurisdiction.

In the circumstances, I would uphold the judgment of the High Court though for different reasons and dismiss this appeal with costs.

Ali F.J.: I agree with the conclusion that this appeal be dismissed.

I wish only to add that on the facts it would seem that the respondent union had at one time been accorded recognition by the employer. Their dissatisfaction, therefore, was really against the withdrawal of that recognition. While it may be true to say that their protests to the employer could amount to a claim for recognition so as to attract the prohibition in section 10 of the Act, it was nevertheless evidence of a dispute between the workmen over recognition falling within the definition of the term "trade dispute". In that context section 10, so far as it contains no express words to that effect, cannot be construed as limiting the power expressly conferred on the Minister by section 23 (2) of the Act to refer any trade dispute to the Industrial Court.

Appeal dismissed.

Solicitors: *Shearn, Delamore & Co.; Shook Lin & Bok; R. Rajasingam & Co.*